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2:10-CV-00008

Plaintiff filed his Objections on January 27, 2010. Plaintiff argues his claims for events extending back to 2005 should not be barred by limitations and attempts to sue defendant Dr. PATEL for failing to diagnose his hernia. Plaintiff states he was diagnosed with a hernia on August 3, 2007 by a Dr. Platt. Having become aware of the condition in 2007, his claim against PATEL for failing to sooner diagnose the condition expired in August of 2009, several months

before he filed the instant suit. Tolling limitations for the amount of time a timely grievance would have consumed only extends limitations by ninety days. Thus, this claim is still barred by limitations, as are plaintiff's claims back to 2005.

Further, plaintiff's allegations do not state facts supporting a claim of deliberate indifference in violation of the Eighth Amendment, but, at most, might support a claim of medical negligence. Plaintiff has failed to state a claim of deliberate indifference against either defendant.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the Objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court, as supplemented herein.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge, as supplemented herein.

IT IS THEREFORE ORDERED that the Civil Rights Complaint by MARIANO GARCIA is DISMISSED WITH PREJUDICE AS FRIVOLOUS AND WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.


LET JUDGMENT BE ENTERED ACCORDINGLY.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box

13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

IT IS SO ORDERED.

Signed this the 15th day of October, 2010.


MARY LOU ROBINSON
United States District Judge